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14 (*continued on following page*)

15
16 **UNITED STATES DISTRICT COURT**
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

17 SUNIL KUMAR, Ph. D., PRAVEEN
18 SINHA, Ph. D.,

19 Plaintiffs,

20 v.

21 DR. JOLENE KOESTER, in her
22 official capacity as Chancellor of
California State University,

23 Defendant.

Case No. 2:22-cv-07550-RGK-MAA

**JOINT STATEMENT OF
UNDISPUTED AND DISPUTED
FACTS**

Court Trial:

Date: October 24, 2023
Crtrm: 850
Judge: Hon. R. Gary Klausner

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UNDISPUTED FACTS

1. Plaintiffs Sunil Kumar and Praveen Sinha are professors at California State University (“CSU”). [First Am. Compl. at ¶8 (ECF No. 80).]

2. Plaintiffs were born in India and are adherents to Hinduism. [First Am. Compl. at ¶8 (ECF No. 80).]

3. Defendant Dr. Jolene Koester is the Chancellor of the CSU and is being sued in her official capacity. [First Am. Compl. at ¶ 24 (ECF No. 80)].

8 4. In 2021, CSU’s Title IX and DHR Policy Revision Workgroup (“Title
9 IX Workgroup”) was convened by CSU’s Chancellor to address systemwide policy
10 issues, and began studying the issue of caste discrimination. [Anson Decl. ¶ 3 (ECF
11 No. 115-4); Deposition Transcript of Laura Anson (“Anson Dep. Tr.”) 19:20-22:2
12 (available at ECF No. 115-13, which is Exh. 9 to Michalowski Decl.).]

13 5. The CSU Policy Prohibiting Discrimination, Harassment, Sexual
14 Misconduct, Sexual Exploitation, Dating Violence, Domestic Violence, Stalking
15 and Retaliation (Nondiscrimination Policy) (“CSU Nondiscrimination Policy” or
16 “Policy”), as revised on January 22, 2023 states:

“The CSU prohibits the following conduct, as defined in Article VII.

A. Discrimination based on any Protected Status: i.e., Age, Disability (physical and mental), Gender (or sex, including sex stereotyping), Gender Identity (including transgender), Gender Expression, Genetic Information, Marital Status, Medical Condition, Nationality, Race or Ethnicity (including color, caste, or ancestry), Religion (or religious creed), Sexual Orientation, and Veteran or Military Status.”

27 [CSU Nondiscrimination Policy, *Prohibited Conduct Covered Under this Policy*,
28 Article II, Section A, 1-2 (available at ECF No. 115-6, which is Exh. 3 to the

1 Declaration of Laura Anson (“Anson Decl.”) (ECF No. 115-04)].

2 6. The Policy as amended added, among other things, the term “caste” for
3 the first time in CSU’s history. [CSU Nondiscrimination Policy, Article II, Section
4 A, pp. 1-2. (ECF No. 115-6).]

5 7. The Policy that included the term caste became effective on January 1,
6 2022. Anson Decl. ¶ 13 (ECF No. 115-4).

7 8. The Policy’s prohibition of caste discrimination applies to Plaintiffs.
8 [See generally CSU Nondiscrimination Policy (ECF No. 115-6).]

9 9. Article VII of the Nondiscrimination Policy defines Discrimination as:
10 “Discrimination is (an) Adverse Action(s) against a Complainant
11 because of their Protected Status.”

12 [CSU Nondiscrimination Policy, *Policy Definitions, Prohibited*
13 *Conduct Defined*, Article VII, Section A, 7 (ECF No. 115-06).]

14 10. Article VII of the Nondiscrimination Policy defines Adverse Action as:
15 “Adverse Action means an action engaged in by the
16 Respondent that has a substantial and material adverse
17 effect on the Complainant’s ability to participate in a
18 university program, activity, or employment. Minor or
19 trivial actions or conduct not reasonably likely to do more
20 than anger or upset a Complainant does not constitute an
21 Adverse Action. An adverse employment action is any
22 conduct or employment action that is reasonably likely to
23 impair an employee’s job performance or prospects for
24 advancement or promotion.

25 If Adverse Action is taken because of a Complainant’s
26 Protected Status, that means that the Complainant’s
27 Protected Status is a substantial motivating reason (but not
28 necessarily the only reason) for the Adverse Action.”

1 [CSU Nondiscrimination Policy, *Policy Definitions, Prohibited*
2 *Conduct Defined*, Article VII, Section A, 7 (ECF No. 115-06).]

3 11. Article VII of the Nondiscrimination Policy defines Harassment as
4 follows:

5 “Harassment means unwelcome verbal, nonverbal or
6 physical conduct engaged in because of an individual
7 Complainant's Protected Status. If a Complainant is
8 harassed because of their Protected Status, that means that
9 the Complainant's Protected Status is a substantial
10 motivating reason (but not necessarily the only reason) for
11 the conduct. Harassment may occur when:

12 a. Submitting to, or rejecting, the verbal, nonverbal or
13 physical conduct is explicitly or implicitly a basis for:
14 I. Decisions that adversely affect or threaten employment,
15 or which are being presented as a term or condition of the
16 Complainant's employment; or
17 II. Decisions that affect or threaten the Complainant's
18 academic status or progress, or access to benefits and
19 services, honors, programs, or activities available at or
20 through the university.

21 OR

22 The conduct is sufficiently severe or pervasive so that its
23 effect, whether intended or not, could be considered by a
24 reasonable person under similar circumstances and with
25 similar identities, and is in fact considered by the
26 Complainant as creating an intimidating, hostile or
27 offensive work or educational environment that denies or
28 substantially limits an individual's ability to participate in

1 or benefit from employment and/or educational, services,
2 activities, or other privileges provided by the CSU.

3 Harassment includes, but is not limited to, verbal
4 harassment (e.g., epithets, derogatory comments, or
5 slurs), physical harassment (e.g., assault, impeding or
6 blocking movement, or any physical interference with
7 normal work or movement), and visual forms of
8 harassment (e.g., derogatory posters, cartoons, drawings,
9 symbols, or gestures.). Single, isolated incidents will
10 typically be insufficient to rise to the level of harassment.”

11 [CSU Nondiscrimination Policy, *Policy Definitions, Prohibited*
12 *Conduct Defined*, Article VII, Section A, 7-8 (ECF No. 115-06).]

13 12. Article VII of the Nondiscrimination Policy defines Protected Status
14 as:

15 “Protected Status includes Age, Disability (physical or
16 mental), Gender (or sex), Genetic Information, Gender
17 Identity (including transgender), Gender Expression,
18 Marital Status, Medical Condition, Nationality, Race or
19 Ethnicity (including color, caste, or ancestry), Religion or
20 Religious Creed, Sexual Orientation, and Veteran or
21 Military Status.”

22 [CSU Nondiscrimination Policy, *Policy Definitions, Definitions of*
23 *Capitalized Terms*, Article VII, Section B, 16 (ECF No. 115-06).]

24 13. The Nondiscrimination Policy does not define caste. [See generally
25 CSU Nondiscrimination Policy (ECF No. 115-06).]

26 14. The Nondiscrimination Policy does not define “sex” or “color.” [CSU
27 Nondiscrimination Policy, *Policy Definitions, Definitions of Capitalized Terms*,
28 Article VII, Section B, 13-17 (ECF No. 115-06); Deposition Transcript of Ajantha

¹ Subramanian (“Subramanian Dep. Tr.” 72:3-22 (Ex. 31 to the Supplemental Declaration of Jeffrey P. Michalowski (“Michalowski Supp. Decl.”).]

3 15. The Title IX Workgroup considered multiple definitions of the term
4 “caste” as used in the Nondiscrimination Policy. The Title IX Workgroup did not
5 recommend a definition of the term “caste” be included in the proposed Policy
6 which was later adopted by the Chancellor’s office. Pl. Tr. Br. at Ex. J (ECF No.
7 114-11) (Bates No. CSU 000936-000937); Twersky Decl. at Ex. A, relevant pages
8 from Anson Dep. Tr., 94:19-101:4.]

9 16. There is not one universally accepted definition of caste. [Pl. Tr. Br. at
10 Ex. B (ECF No. 114-3), 32:23-24.]

11 17. The Merriam-Webster dictionary definition contains multiple
12 definitions of “caste:”

13 1: one of the hereditary social classes in Hinduism that restrict the
14 occupation of their members and their association with members of other
15 castes

16 2 a: a division of society based on differences of wealth, inherited rank
17 or privilege, profession, occupation, or race

18 b: the position conferred by caste standing: PRESTIGE
19 art and religion have lost *caste* -- F.L. Baumer

20 3: a system of rigid social stratification characterized by hereditary status,
21 endogamy, and social barriers sanctioned by custom, law, or religion

22 4: a specialized form (such as the worker of an ant or bee) of polymorphic
23 social insect that carries out a particular function in the colony

24 | Soldier castes for fighting enemy ants

25 [Merriam-Webster, <https://www.merriam-webster.com/dictionary/caste>]

26 18. The Nondiscrimination Policy does not discuss, name, or mention
27 Hinduism. [CSU Nondiscrimination Policy (ECF No. 115-06); Deposition
28 Transcript of Sunil Kumar, Ph.D. (“Kumar Dep. Tr.”) 136:20-137:14 (available at

1 ECF No. 115-14, which is Exh. 11 to the Declaration of Jeffrey P. Michalowski
2 (“Michalowski Decl.”) (ECF No. 115-08); Deposition Transcript of Praveen Sinha
3 (“Sinha Dep. Tr.”) 140:1-11 (available at ECF No. 115-22, which is Exh. 18 to
4 Michalowski Decl.).]

5 19. The Nondiscrimination Policy does not discuss, name, or mention
6 Dalits, Brahmins, Kshatriyas, Vaishyas, or Shudras. [See, CSU Nondiscrimination
7 Policy (ECF No. 115-06).]

8 20. The Nondiscrimination Policy does not discuss, name, or mention the
9 terms “India” or “South Asia.” [See, CSU Nondiscrimination Policy (ECF No. 115-
10 06).]

11 21. Prior to recommending the word “caste” be added to CSU’s
12 Nondiscrimination Policy, the Title IX Workgroup solicited and/or received
13 feedback from approximately twenty stakeholder groups. [Anson Decl. ¶ 9 (ECF
14 No. 115-4); Anson Dep. Tr. 19:20-20:25 (ECF No. 115-12).]

15 22. The California State Students Association (“CSSA”) and the California
16 Faculty Association (“CFA”) were two of approximately twenty stakeholder groups
17 to make known their views about caste discrimination. [Anson Dep. Tr. 19:20-
18 20:25, 35:15-36:9 (ECF No. 115-12).]

19 23. The CFA and CSSA, as well as the Associated Students, Inc. of the
20 California Polytechnic State University at San Luis Obispo (“Cal Poly SLO ASI”),
21 issued Resolutions in support of adding caste to the Nondiscrimination Policy of
22 which the Title IX workgroup was aware. [Anson Decl. ¶ 10 (ECF No. 115-4);
23 Anson Dep. Tr. 19:20-20:25, 51:20-52:9 (ECF No. 115-12).]

24 24. The CSSA Resolution states, in part, that:

25 **WHEREAS:** Caste is a structure of oppression that affects over 1
26 billion people across the world based in birth that determines
27 social status and assigns “spiritual purity”; and

28 **WHEREAS:** There are four main caste groups: Brahmins,

1 Kshatriyas, Vaishyas, and Shudras, with lower caste Shudras and
2 those outside the caste system, known as Dalits meaning “broken
3 but resilient” and formerly known as “untouchables”, considered
4 oppressed by caste;

5 ****

6 **WHEREAS:** Caste-oppressed groups continue to experience
7 profound injustices including socioeconomic inequalities,
8 usurpation of their land, rights, and experience brutal violence at
9 the hands of the “upper” Castes . . .

10 [Pl. Tr. Br. at Ex. D (ECF No. 114-5).]

11 25. The CFA Resolution states, in part, that:

12 **WHEREAS**, Caste is a structure of oppression that affects over 1 billion
13 people across the world based in birth that determines social status and
14 assigns spiritual purity, and

15 **WHEREAS**, There are four main caste groups: Brahmins, Kshatriyas,
16 Vaishyas, and Shudras, with lower caste Shudras and those outside the caste
17 system, known as Dalits meaning “broken but resilient” and formerly known
18 as “untouchables”, considered oppressed by caste,

19 **WHEREAS**, Caste is present in the Hindu religion and common in
20 communities in South Asia and the South Asia Diaspora,

21 **WHEREAS:** Caste-oppressed groups continue to experience
22 profound injustices including socioeconomic inequalities, usurpation
23 of their land, rights, and experience brutal violence at the hands of the
24 “upper” Castes . . .

25 Pl. Tr. Br. at Ex. C (ECF No. 114-4).

26 26. The Cal Poly SLO ASI Resolution, sent to CSU’s Chancellor on April
27 6, 2021 (“ASI Resolution”), states, in part:

28 **WHEREAS:** Caste is a structure of oppression that affects over 1 billion

1 people across the world based in birth that determines social status and
2 assigns “spiritual purity”; and

3 **WHEREAS:** There are four main caste groups: Brahmins, Kshatriyas,
4 Vaishyas, and Shudras, with lower caste Shudras and those outside the caste
5 system, known as Dalits meaning “broken but resilient” and formerly known
6 as “untouchables”, considered oppressed by caste;

7 **WHEREAS:** Caste-oppressed groups continue to experience
8 profound injustices including socioeconomic inequalities, usurpation
9 of their land, rights, and experience brutal violence at the hands of the
10 “upper” Castes . . .

11 Pl. Tr. Br. at Ex. E (ECF No. 114-6).

12 27. The Cal Poly SLO ASI submitted a letter to CSU’s Chancellor with its
13 Resolution that states, in part: “Caste is a structure of oppression in Hindu society
14 based on ones spiritual purity.”

15 Pl. Tr. Br. at Ex. E (ECF No. 114-6).

16 28. The CFA’s primary purpose is to maintain a collective bargaining
17 agreement for the employees they represent. [California Faculty Association, *CFA*
18 *Bylaws, Article II: Purposes*, 3 (amended Apr. 2021) (Ex. 1 to Defendant’s Request
19 for Judicial Notice in support of Opp’n (“RJN”)).]

20 29. The CSSA is a “student-led organization” that engages and advocates
21 for the needs of half a million students across the CSU, but “maintain[s] autonomy
22 from the CSU Office of the Chancellor in the stances it takes [and] the work it
23 carries out.” [Cal State Student Association, *The Constitution of the California*
24 *State Student Association, Article II: Mission and Purpose & Article VI:*
25 *Relationship to External Bodies*, 6, 15 (2022–2023) (Ex. 2 to RJN).]

26 30. The Cal Poly SLO ASI is the “student body organization” that “is the
27 official voice of Cal Poly Students.” [ASI of California Polytechnic State
28 University at San Luis Obispo, *ASI Bylaws, ASI Board of Directors*, 4.1. *Purpose of*

1 *the ASI Board of Directors*, 6 (May 17, 2023) (Ex. 3 to RJN).]

2 31. CSSA and Cal Poly SLO ASI are “auxiliary organizations” the purpose
3 of which is to provide essential activities closely related to, but not normally
4 included as part of, the regular instructional program of CSU. [Cal. Educ. Code §§
5 89300, 89901.]

6 32. CFA is not a CSU auxiliary organization and does not represent the
7 CSU in any capacity. [Cal. Educ. Code §§ 89902.]

8 33. In response to a July 4, 2021 email from Wenda Fong, current chair of
9 the CSU Board of Trustees, regarding CSU’s consideration to include caste in the
10 Nondiscrimination Policy, CSU interim executive Vice Chancellor of Academic
11 and Student affairs Fred Wood explained:

12 We first became aware of student interest in this issue when we
13 received a number of “form letters” from both CSU students
14 (mainly from SLO) and students from a number of other non-CSU
15 universities regarding this issue. We then received a resolution
16 from the SLO ASI which was followed by a CSSA resolution.

17 AVC Hong then briefed the Chancellor’s counsel based on her
18 research of the issue, and on the discussions at the CSSA, which
19 she reported was dominated by input from a number of non-CSU
20 speakers. Anticipating media interest, we developed the attached
21 “Talking Points” as we began further discussion of what steps we
22 might take next. Since this issue has a number of HR and OGC
23 related aspects, we have created a small workgroup to discuss this
24 in greater detail and to bring recommendations to the Chancellor’s
25 Council for consideration. Thanks again for asking about this. I
26 hope this brief is helpful.

27 [Twersky Decl. at Ex. E (Bates No. CSU 001215).]

28 34. CSU did not rely on any of their designated experts in this case when

1 deciding to amend the Policy to include caste. Twersky Decl. at Exs. B (Rich Tr. at
2 8:18-22); C (Ravitch Tr. at 13:19-25) & D (Subramanian Tr. at 11:20-24).

3 35. CSU's experts were retained solely for purposes of this litigation after
4 it commenced. Twersky Decl. at Exs. B (Rich Tr. at 8:18-22); C (Ravitch Tr. at
5 13:19-25) & D (Subramanian Tr. at 11:20-24).

6 **DISPUTED FACTS**

7 36. The term caste is often associated with Hinduism.

8 **Plaintiff's Citations:** [Declaration of Michael K. Twersky, Esq. (filed on October
9 3, 2023 in conjunction with Plaintiffs' Opposition to Defendant's Trial Brief)
10 ("Twersky Decl.") (ECF No. ____) at Ex.D, relevant pages from Deposition
11 Transcript of Dr. Ajantha Subramanian ("Subramanian Dep. Tr.") (Defendant's
12 expert stating that caste "is often associated with Hinduism"), 106:21-23; *see also*
13 *Merriam-Webster*, <https://www.merriam-webster.com/dictionary/caste> (defining
14 caste as "one of the hereditary social classes in Hinduism").]

15 **Defendant's Citations:** Disputed due to vagueness and incomplete citation.
16 Subramanian Dep. Tr. 106:21-108:2 (Ex .31 to Michalowski Supp. Decl.)
17 (Hinduism is not derived from Hinduism, but it is "often associated with Hinduism .
18 .. but not associated solely with Hinduism, I should say. It's associated with
19 Hinduism and with other religious formations in South Asia.")

20 37. The term "caste" is not derived from Hinduism.

21 **Plaintiffs' Citations:** Twersky Decl. at Ex. D, 106:21-23. (Defendant's expert
22 stating that caste "is often associated with Hinduism"), 106:21-23; *see also*
23 *Merriam-Webster*, <https://www.merriam-webster.com/dictionary/caste> (defining
24 caste as "one of the hereditary social classes in Hinduism").

25 **Defendant's Citations:** Subramanian Dep. Tr. 106:21-23.

26 38. There is not one universally accepted definition of "race."

27 **Defendant's Citations:** Deposition Transcript of Camille Gear Rich ("Rich Dep.
28 Tr.") 20:19-22, 46:20-47:13 (Ex. 30 to the Michalowski Supp. Decl.); Subramanian

1 Dep. Tr. 49:10-51:16, 52:22-54:5 (Ex. 31 to Michalowski Supp. Decl.)

2 **Plaintiffs' Citations:** By its very definition, this an expert “opinion” not a “fact”.

3 *See also* Plaintiffs' Objections to Disputed Facts.

4 39. There is no one universally accepted definition of “ethnicity.”

5 **Defendant's Citations:** E.g., Merriam-Webster, <https://www.merriam-webster.com/dictionary/ethnicity>; Merriam-Webster, <https://www.merriam-webster.com/dictionary/ethnic>; The Britannica Dictionary, <https://www.britannica.com/dictionary/ethnicity>.

6 **Plaintiffs' Citations:** *See* Plaintiffs' Objections to Disputed Facts.

7 40. There is no one universally accepted definition of “religion.”

8 **Defendant's Citations:** E.g., Merriam-Webster, <https://www.merriam-webster.com/dictionary/religion>; The Britannica Dictionary, <https://www.britannica.com/dictionary/religion>.

9 **Plaintiffs' Citations:** *See* Plaintiffs' Objections to Disputed Facts.

10 41. There is no one universally accepted definition of “sex.”

11 **Defendant's Citations:** E.g., Merriam-Webster, <https://www.merriam-webster.com/dictionary/sex>; The Britannica Dictionary, <https://www.britannica.com/dictionary/sex>.

12 **Plaintiffs' Citations:** *See* Plaintiffs' Objections to Disputed Facts.

13 42. Caste systems are descent-based systems of social stratification that
14 exists in many parts of the world, including South Asia, East Asia, Africa, and the
15 Americas.

16 **Defendant's Citations:** Expert Report by Dr. Ajantha Subramanian (“Subramanian
17 Report”) 3, which is Ex. 37 to the Declaration of Dr. Ajantha Subramanian
18 (“Subramanian Decl.”). For clarity, Ex. 37, authenticated through the Subramanian
19 Decl. is identical to ECF No. 115-30, Exhibit 26.

20 **Plaintiffs' Citations:** By its very definition, this an expert “opinion” not a “fact”.

21 *See also* Plaintiffs' Objections to Disputed Facts.

1 43. Caste is not coextensive with Hinduism or any other religion.

2 **Defendant's Citations:** Subramanian Report, 7-10 (Ex. 37 to Subramanian Decl.).

3 **Plaintiff's Citations:** By its very definition, this an expert “opinion” not a “fact”.

4 *See also* Plaintiffs’ Objections to Disputed Facts.

5 44. Caste is not coextensive with India or South Asia.

6 **Defendant's Citations:** Subramanian Report, 3-4 (Ex. 37 to Subramanian Decl.);
7 Expert Report of Professor Frank S. Ravitch (“Ravitch Report”), 9-10 (available at
8 ECF No. 115-33, which is Exh. 28 to the Declaration of Frank S. Ravitch (“Ravitch
9 Decl.”) (ECF No. 115-32)).

10 **Plaintiff's Citations:** By its very definition, this an expert “opinion” not a “fact”.

11 *See also* Plaintiffs’ Objections to Disputed Facts.

12 45. Caste is a social practice among most communities and all the major
13 religions (Hindus, Muslims, Sikhs and Christians) in South Asia.

14 **Defendant's Citations:** Kumar Dep. Tr. 78:10–16 (ECF No. 115-14); Exh. 3 to
15 Kumar Dep. Tr., which is Ex. 33 to the Michalowski Supp. Decl.; Sinha Dep. Tr.
16 112:20-114:21 (ECF No. 115-22).

17 **Plaintiffs' Citations: DISPUTED:** Caste can be a social practice within
18 communities but it is not exclusively so, and it is often tied only to Hindus and
19 people of South Asian descent. *See, e.g.*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/ca>; Twersky Decl. at Ex. D, Subramanian Dep. Tr., 106:11-23.

22 46. The Merriam-Webster dictionary contains multiple definitions of
23 “race:”

24 1 a. *see usage* paragraph below : any one of the groups that humans are
25 often divided into based on physical traits regarded as common among people of
26 shared ancestry

27 b. *dated* : a group of people sharing a common cultural, geographical,
28 linguistic, or religious origin or background

c. archaic : the descendants of a common ancestor : a group sharing a common lineage

2 a: a group of living things considered as a category

b archaic : BREED

3 biology : a group within a species that is distinguishable (as morphologically, genetically, or behaviorally) from others of the same species

also : a usually informal taxonomic category representing such a group that is often considered equivalent to a subspecies

4 archaic : a group of people sharing some habit or characteristic (such as profession or belief)

Defendant's Citations: Merriam-Webster, <https://www.merriam-webster.com/dictionary/race>

Plaintiffs' Citations: *See* Plaintiffs' Objections to Disputed Facts.

15 47. The Merriam Webster dictionary contains two definitions of the term
16 "ethnicity:"

1: ethnic quality or affiliation

2: a particular ethnic affiliation or group.

19 Both definitions turn on multiple definitions of the term “ethnic:”

1a: of or relating to large groups of people classed according to common racial, national, tribal, religious, linguistic, or cultural origin or background

b: being a member of a specified ethnic group

c: of, relating to, or characteristic of a minority ethnic group

2: of or relating to the Gentiles or to nations not converted to Christianity :
PAGAN

endant's C

Defendant's Citations: Merriam-Webster, <https://www.merriam-webster.com>

[webster.com/dictionary/ethnicity](https://www.merriam-webster.com/dictionary/ethnicity); Merriam-Webster, <https://www.merriam-webster.com/dictionary/ethnic>

1 **Plaintiffs' Citations:** *See* Plaintiffs' Objections to Disputed Facts.

2 48. The Merriam-Webster dictionary contains multiple definitions of
3 "sex," and a usage note stating that "usage of sex and gender is by no means
4 settled."

5 1a: either of the two major forms of individuals that occur in many species
6 and that are distinguished respectively as female or male especially on the
7 basis of their reproductive organs and structures
8 b: the sum of the structural, functional, and sometimes behavioral
9 characteristics of organisms that distinguish males and females
10 c: the state of being male or female
11 d: males or females considered as a group
12 2a: sexually motivated phenomena or behavior
13 b: SEXUAL INTERCOURSE
14 3: GENITALIA

15 **Defendant's Citations:** Merriam-Webster, [https://www.merriam-](https://www.merriam-webster.com/dictionary/sex)
16 [webster.com/dictionary/sex](https://www.merriam-webster.com/dictionary/sex)

17 **Plaintiffs' Citations:** *See* Plaintiffs' Objections to Disputed Facts.

18 49. The Title IX Workgroup consisted of 9 CSU administrators who met
19 privately to, among other things, consider recommending the addition of caste to
20 the Nondiscrimination Policy.

21 **Plaintiffs' Citations:** Twersky Decl. at Ex. A, Anson Dep. Tr., 19:12-25, 23:9-21,
22 24:1-11; *id.* at 27:1-10 (Defendant's counsel asserting that any communications
23 within the Title IX Workgroup are privileged because it included "two
24 representatives from the Office of General Counsel...."); *id.* at Ex. E, July 26, 2021
25 email exchange between Fred Wood and Wenda Fong, CSU 001215.

26 **Defendant's Citations:** Anson Decl. ¶¶ 3-5, 9, 11 (ECF No. 115-4) (working group
27 formed at direction of CSU Chancellor to discuss and recommend
28 Nondiscrimination Policy revisions – not to amend it for purpose of adding caste;

1 working group held seven private meetings, but reached out broadly to stakeholder
2 groups for feedback and received significant input and public feedback); Anson
3 Dep. Tr. 19:20-20:19, 26:12-15 (ECF No. 115-12) (no workgroup member assigned
4 to address caste, working group sought feedback from approximately 20 different
5 stakeholder groups, reviewed that feedback, and incorporated it into Policy).

6 50. The Title IX Workgroup was generally aware of the CFA and CSSA
7 resolutions, but did not actually review or rely on the documents.

8 **Defendant's Citations:** Anson. Dep. Tr. 35:11-36:9 (ECF No. 115-13).]

9 **Plaintiffs' Citations:** [Anson Decl. ¶ 10 (ECF No. 115-4); Anson Dep. Tr. 19:20-
10 20:25; 32:25-33:13; 35:19-36:9 (ECF No. 115-13).]

11 51. The Title IX Workgroup was aware of, and considered, the Merriam-
12 Webster dictionary definition.

13 **Plaintiffs' Citations:** Plts. Tr. Br. at Ex. J (ECF No. 114-11) (Bates No. CSU
14 000936-000937); Twersky Decl. at Ex. B, Anson Dep. Tr., 94:19-101:4.

15 **Defendant's Citations:** Anson Dep. Tr. 99:18-102:25 (ECF No. 115-12), Ex J to
16 Longo Decl. (ECF 114-11.)

17 52. The term caste as used in the Policy is not defined on CSU's websites
18 or in any written material provided to the CSU community.

19 **Plaintiffs' Citations:** Pl. Tr. Br. at Ex. B (ECF No. 114-3), 32:8-20(acknowledging
20 that "there is nowhere" to find the definition of caste used in the Nondiscrimination
21 Policy).

22 **Defendant's Citations:** See Def.'s Objections to Plaintiff's Statements of Disputed
23 Fact.

24 53. Article VII of the Nondiscrimination Policy defines Race or Ethnicity
25 as: "Race or Ethnicity includes ancestry, color, caste, ethnic group identification,
26 and ethnic background." [CSU Nondiscrimination Policy, *Policy Definitions*,
27 *Definitions of Capitalized Terms*, Article VII, Section B, 16 (ECF No. 115-06).]

28 **Plaintiffs' Citations:** CSU Nondiscrimination Policy, *Policy Definitions*,

1 *Definitions of Capitalized Terms*, Article VII, Section B(20), p. 16 (defining terms
2 Race or Ethnicity) (ECF No. 115-06).

3 **Defendant's Citations:** CSU Nondiscrimination Policy, *Policy Definitions*,
4 *Definitions of Capitalized Terms*, Article VII, Section B, 13-17 (ECF No. 115-06);
5 Subramanian Dep. Tr. 72:3-22 (policy illustrates but does not define race or
6 ethnicity); (Ex. 31 to Michalowski Supp. Decl.).

7 54. The CSU Nondiscrimination Policy defines more than 40 terms in its
8 “Definitions” section, including: gender, gender identity, sex stereotyping, race,
9 ethnicity, religion, and nationality.

10 **Plaintiffs' Citations:** CSU Nondiscrimination Policy, Article VII, Section B (10),
11 (16), (20), (22), pp. 14-16 (ECF No. 115-06) (“Race or Ethnicity” included as terms
12 in the section of the Nondiscrimination Policy drafted by CSU entitled
13 “*Definitions*” of capitalized terms (emphasis added).

14 **Defendant's Citations:** CSU Nondiscrimination Policy, *Policy Definitions*,
15 *Definitions of Capitalized Terms*, Article VII, Section B, 13-17 (ECF No. 115-06)
16 (policy illustrates but does not define race or ethnicity, nationality, protected status,
17 religion or religious creed); Subramanian Dep. Tr. 72:3-22 (Ex. 31 to Michalowski
18 Supp. Decl.) (regarding race or ethnicity).

19 55. Article VII of the Nondiscrimination Policy does not define “race” or
20 “ethnicity.”

21 **Defendant's Citations:** CSU Nondiscrimination Policy, *Policy Definitions*,
22 *Definitions of Capitalized Terms*, Article VII, Section B, 13-17 (ECF No. 115-06);
23 Subramanian Dep. Tr. 72:3-22 (policy does not define race or ethnicity) (Ex. 31 to
24 Michalowski Supp. Decl.)

25 **Plaintiffs' Citations:** CSU Nondiscrimination Policy, Article VII, Section B (20),
26 p. 16 (ECF No. 114-2) (contained in section of the Nondiscrimination Policy
27 drafted by CSU entitled “Definitions” not illustrations).

28 56. Article VII of the Nondiscrimination Policy provides illustrations of

1 “Race or Ethnicity” – “Race or Ethnicity includes ancestry, color, caste, ethnic
2 group identification, and ethnic background.”

3 **Defendant’s Citations:** CSU Nondiscrimination Policy, *Policy Definitions*,
4 *Definitions of Capitalized Terms*, Article VII, Section B, 13-17 (ECF No. 115-06);
5 Subramanian Dep. Tr. 72:3-22 (policy does not define race or ethnicity) (Ex. 31 to
6 Michalowski Supp. Decl.

7 **Plaintiffs’ Citations:** CSU Nondiscrimination Policy, Article VII, Section B (20),
8 p. 16 (ECF No. 114-2) (contained in section of the Nondiscrimination Policy
9 drafted by CSU entitled “Definitions” not illustrations).

10 57. CSU acknowledges that “if an employee or student were unfamiliar
11 with the term caste . . . [t]hey would need only reach for a dictionary (or more,
12 likely, consult Google or other online resources to find quick and comprehensive
13 information.”

14 **Plaintiffs’ Citations:** Defendant’s Trial Brief (ECF No. 115) at p. 24.

15 **Defendant’s Citations:** Rich Dep. Tr. 51:1-25 (Ex. 30 to Michalowski Supp. Decl.)
16 (one unfamiliar with term may look to university policies and materials put out by
17 human resources, Title IX office); Kumar Dep. Tr. 179:11-184:21 (ECF No. 115-
18 14) (testifying he would go to “university authorities” for questions regarding
19 Policy); Sinha Dep. Tr. 49:23-50:22, 126:2-128:7 (ECF No. 115-16) (same). See
20 also, Def.’s Objections to Plaintiff’s Statements of Disputed Fact.

21 58. The CSSA resolution did not mention the term “Hindu.”

22 **Plaintiffs’ Citations:** Pl. Tr. Br. at Ex. D (ECF No. 114-5) (which includes
23 footnotes to www.equalitylabs.org/castesurvey, which includes numerous
24 references to the term “Hindu”).

25 **Defendant’s Citations:** CSSA Resolution (ECF No. 114-5, which is Ex. D to the
26 Declaration of Alberto M. Longo (ECF No. 114-1).

27 59. The terms “Brahmins, Kshatriyas, Vaishyas, Shudras and Dalits” are
28 associated with the Hindu religion and people from South Asia.

1 **Defendant's Citations:** See Def.'s Objections to Plaintiff's Statements of Disputed
2 Fact.

3 **Plaintiff's Citations:** Twersky Decl. at Ex G, relevant pages of Deposition
4 testimony of Plaintiff Praveen Sinha ("Sinha Dep. Tr.") at 88: 14-22; *id.* at Ex. ___,
5 Subramanian Dep. Tr. at 100:22-25 to 101:3-12; *id.* at Ex. ___, Anson Dep. Tr. at
6 31:1-6; *id.* at 53:5-15.

7 60. The Cal Poly SLO ASI Resolution did not mention the term "Hindu."

8 **Defendant's Citations:** ASI Resolution, 3-4 (ECF No. 114-6, which is Ex. E to the
9 Longo Decl.).]

10 **Plaintiffs' Citations:** Pl. Tr. Br. at Ex. E (ECF No. 114-6) ASI Resolution (which
11 includes footnote to www.equalitylabs.org/castesurvey, which includes numerous
12 references to the term "Hindu").

13 61. CSU did not intend for its Policy to target Hinduism or any other
14 religion.

15 **Defendant's Citation:** Anson Decl. ¶ 8 (ECF No. 115-4); Anson Dep. Tr. 49:25-
16 50:3, 73:6-11 (ECF No. 115-13).

17 **Plaintiffs' Citation:** Inclusion of the word caste without definition is targeting
18 Hinduism as explained in Plaintiffs' Opposition to Defendant's Trial Brief (ECF
19 No. ___), pp. 6, 7. *See also* Plaintiffs' Objections to Disputed Facts

20 62. The Policy prohibits caste discrimination by all members of the CSU
21 community, regardless of their religion or national origin.

22 **Defendant's Citations:** See Sinha Dep. Tr. 135:13–137:15 (ECF No. 115-22);
23 Anson Decl. ¶ 14 (ECF No. 115-4); *see*, CSU Nondiscrimination Policy (ECF No.
24 115-06).

25 **Plaintiff's Citation:** *See* Plaintiffs' Objections to Disputed Facts.

26 63. There is no evidence that the Chancellor or any CSU administrator
27 ever showed any hostility toward Hinduism.

28 **Defendant's Citations:** Kumar Dep. Tr. 135:23–139:10 (ECF No. 115-14); Sinha

1 Dep. Tr. 151:4-9 (ECF No. 115-22); Pls.’ Resp. to Def.’s Interrogs. 8:11-9:25 (ECF
2 No. 115-9, which is Exh. 5 to Michalowski Decl.).

3 **Plaintiffs’ Citations:** Inclusion of the word caste without definition, and relying on
4 the Resolutions to add caste, shows hostility towards Hinduism as explained in
5 Plaintiffs’ Opposition to Defendant’s Trial Brief (ECF No. ____), pp. 6, 7.

6 64. The Nondiscrimination Policy has not been enforced against Plaintiffs
7 on the basis of caste.

8 **Defendant’s Citations:** Kumar Dep. Tr. 146:16–147:21 (ECF No. 115-14); Sinha
9 Dep. Tr. 27:10–28:22 (ECF No. 115-22); Pls.’ Resp. to Def.’s Interrogs. 8:11-9:25
10 (ECF No. 115-9).

11 **Plaintiffs’ Citations:** *See* Plaintiffs’ Objections to Disputed Facts.

12 65. No one has threatened to enforce the Nondiscrimination Policy against
13 Plaintiffs on the basis of caste.

14 **Defendant’s Citations:** Kumar Dep. Tr. 146:16 –147:21 (ECF No. 115-14); Sinha
15 Dep. Tr. 27:10–28:22 (ECF No. 115-22); Pl. Kumar’s Resp. to Def.’s Req. for
16 Admis. 4:8-10 (ECF No. 115-10), which is Exh. 6 to Michalowski Decl.; Pl.
17 Sinha’s Resp. to Def.’s Req. for Admis. 4:12-21 (ECF No. 115-11), which is Exh. 7
18 to Michalowski Decl.

19 **Plaintiff’s Citations:** *See* Plaintiffs’ Objections to Disputed Facts.

20 66. Plaintiffs are unaware of any actions taken against them due to the
21 addition of “caste” to the Policy.

22 **Defendant’s Citations:** Pls.’ Resp. to Def.’s Interrogs. 8:11-9:25 (ECF No. 115-9).

23 **Plaintiffs’ Citations:** *See* Plaintiffs’ Objections to Disputed Facts.

24 67. “Both [Plaintiffs] hold the sincere religious belief that neither caste
25 nor a discriminatory caste system are in any way part of the Hindu religion or its
26 teachings.”

27 **Defendant’s Citations:** First Amended Complaint ¶ 18.

28 **Plaintiffs’ Citations:** *See* Plaintiffs’ Objections to Disputed Facts.

1 68. Plaintiff Kumar's religious beliefs do not require him to treat people of
2 different castes differently.

3 **Defendant's Citations:** Kumar Dep. Tr. 108:13–20 (ECF No. 115-14).

4 **Plaintiffs' Citations:** *See* Plaintiffs' Objections to Disputed Facts.

5 69. Plaintiff Kumar cannot identify any way in which he has changed his
6 religious beliefs or practice because of the Nondiscrimination Policy and states
7 "there is no reason to change [his] beliefs so far."

8 **Defendant's Citations:** Kumar Dep. Tr. 106:1–17 (ECF No. 115-14).

9 **Plaintiffs' Citations:** *See* Plaintiffs' Objections to Disputed Facts.

10 70. Plaintiff Sinha's religious beliefs do not require him to treat people of
11 different castes differently.

12 **Defendant's Citations:** Sinha Dep. Tr. 91:6–13 (ECF No. 115-22).

13 **Plaintiffs' Citations:** *See* Plaintiffs' Objections to Disputed Facts.

14 71. Plaintiff Sinha has not changed his religious beliefs or practice due to
15 CSU's implementation of the Nondiscrimination Policy.

16 **Defendant's Citations:** Sinha Dep. 90:23–91:5 (ECF No. 115-22).

17 **Plaintiffs' Citations:** *See* Plaintiffs' Objections to Disputed Facts.

18 72. CSU's Nondiscrimination Policy has not required any religious
19 organization of which plaintiffs are members to alter its doctrines and/or teachings,
20 or to alter its internal policies, procedures or practices.

21 **Defendant's Citations:** Pl. Kumar's Resp. to Def.'s Req. for Admis. 5:3-23 (ECF
22 No. 115-10), which is Exh. 6 to Michalowski Decl.; Pl. Sinha's Resp. to Def.'s Req.
23 for Admis. 5:14-6:7 (ECF No. 115-11), which is Exh. 7 to Michalowski Decl.

24 **Plaintiffs' Citations:** *See* Plaintiffs' Objections to Disputed Facts.

25 73. The Court found that "Plaintiffs' injuries are concrete and personal as
26 they are CSU employees and practitioners of the Hindi faith."

27 **Plaintiffs' Citations:** ECF 102, Order Re: Defendant's Motion for Judgment on the
28 Pleadings.

1 **Defendant's Citations:** See Def.'s Objections to Plaintiff's Statements of Disputed
2 Facts.

3 74. The Court found that Plaintiffs "alleged a sufficient causal connection
4 between the Policy and their injury, as the inclusion of the term 'caste' is the source
5 of their injury."

6 **Plaintiffs' Citations:** ECF 102, Order Re: Defendant's Motion for Judgment on the
7 Pleadings.

8 **Defendant's Citations:** See Def.'s Objections to Plaintiff's Statements of Disputed
9 Facts.

10 Respectfully submitted,

11

12 Dated: October 3, 2023

FOX ROTHSCHILD LLP

13

14 Bv: s/ Michael K. Twersky

15 JOHN J. SHAEFFER

16 MICHAEL K. TWERSKY

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Dated: October 3, 2023

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Bv: s/ Jeffrey P. Michalowski

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1 **SIGNATURE ATTESTATION**

2 Pursuant to Local Rule 5-4.3.4(a)(2)(i), I hereby certify that the content of
3 this document is acceptable to Michael K. Twersky, counsel for Plaintiffs, and that I
4 have obtained Mr. Twersky's authorization to affix his/her electronic signature to
5 this document.

6
7 Dated: October 3, 2023

OUARLES & BRADY LLP

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9 RICHARD A. PAUL
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